

# EXHIBIT 19

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4

5 IN RE PACIFIC FERTILITY CENTER Case No.:  
6 LITIGATION 3:18-cv-01586-JSC  
7

---

8 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
9 JOSEPH CONAGHAN, PhD  
10

11  
12 October 9, 2019

13 9:38 a.m.  
14

15  
16 425 Market Street  
17 San Francisco, California 94105  
18

19  
20  
21 REPORTED BY:

22 Siew G. Ung

23 CSR No. 13994, RPR, CSR  
24  
25

1 APPEARANCES:

2  
3 For PLAINTIFFS AND INTERIM CLASS COUNSEL

4 GIRARD SHARP LLP  
5 ADAM POLK, ESQ.  
6 MANI GOEHRING, ESQ.  
7 601 California Street, Suite 1400  
8 San Francisco, California 94108  
9 415.981.4800  
10 apolk@girardsharp.com  
11 mgoehring@girardsharp.com

12 For PRELUDE AND PACIFIC MSO

13 MORRISON & FOERSTER LLP  
14 WILLIAM TARANTINO, ESQ.  
15 ERIN BOSMAN, ESQ.  
16 425 Market Street  
17 San Francisco, California 94105  
18 415.268.7000  
19 ebosman@mofo.com  
20 wtarantino@mofo.com

21 For CHART INC.

22 MORGAN, LEWIS & BOCKIUS LLP  
23 MOLLY LANE, ESQ.  
24 One Market Street, Spear Street Tower  
25 San Francisco, California 94105  
415.442.1000  
molly.lane@morganlewis.com

For Pacific Fertility Center

GALLOWAY, LUCHESE, EVERSON & PICCHI  
AARON SCHULTZ, ESQ.  
2300 Contra Costa Boulevard, Suite 350  
Pleasant Hill, California 94523  
jpicchi@glattys.com

Also Present:

Michael Barber, Videographer

1 call?

2 A. I called Dr. Romney, not texted -- I  
3 called Alden Romney. I did not text him, as far as  
4 I'm aware. I may have texted him to alert him that  
5 I wanted to call him. I did not talk to anyone else  
6 that day.

7 Q. Did you text-message anybody else?

8 A. No.

9 Q. Have you done work -- you, specific to  
10 MSO -- since the incident to figure out what  
11 happened?

12 MR. TARANTINO: Objection. Calls for  
13 attorney work product, attorney-client privileged  
14 communication.

15 THE WITNESS: We were advised by counsel  
16 that the tank would have to be assessed  
17 independently, so the tank was taken away.

18 BY MR. POLK:

19 Q. How soon after the incident was the tank  
20 taken away?

21 A. My recollection is that it was taken away  
22 later that same week.

23 Q. Within a few days?

24 A. Yes. I mean, the tank failure was on a  
25 Sunday. And I think -- I think it might have been,

1 you know, the Wednesday, the Thursday, Friday after  
2 that.

3 Q. Okay. So the backup tank is brought up  
4 into the IVF lab after you top off Tank 4, right?

5 A. Yes. Once the tissue in Tank 4 was  
6 secure, we brought in the backup tank.

7 Q. Into the IVF lab?

8 A. Yes, correct.

9 Q. And then all the boxes, is what you have  
10 been calling them, are transferred from Tank 4 into  
11 the replacement tank?

12 A. Yes.

13 Q. What happened to Tank 4 after all the  
14 boxes were transferred to the replacement tank?

15 MR. TARANTINO: Objection. Vague.

16 THE WITNESS: So there's 80 of these boxes  
17 in Tank 4, and each these boxes has 16 canes inside  
18 holding eggs or embryos.

19 THE REPORTER: Holding eggs or embryos?

20 THE WITNESS: Eggs or embryos.

21 BY MR. POLK:

22 Q. So there's the boxes. There's the canes.  
23 Are there straws that are inside the canes?

24 A. The straws are inside goblets that are  
25 attached to the canes.

1 Q. So you have got a box.

2 A. A cane.

3 Q. A cane. You have got a goblet.

4 A. And then goblets on the canes holding one  
5 or more straws.

6 Q. How big are the straws?

7 A. There are different types of devices that  
8 are used for containing the eggs and embryos, and we  
9 use straws in a sort of generic way to describe  
10 them.

11 Tank 4 had at least two types of these  
12 devices or containers. Patients who had been frozen  
13 three or four years before the incident, their eggs  
14 and embryos would have been in a little device  
15 called a cryotip.

16 A cryotip is perhaps 3 inches long and 2  
17 or 3 millimeters in diameter.

18 More recent thaws would be on a device  
19 called a cryolock. A cryolock is perhaps 5 inches  
20 long, and, again, 2 to 3 millimeters in diameter.

21 Q. What proportion of the tissue were in  
22 cryolocks as opposed to cryotips?

23 A. Tips. I can give you an estimate. Maybe  
24 80 percent on cryolocks and 20 percent on cryotips.  
25 But that's just an estimate.

1           Q. On the cryolock or tip, where is the  
2 tissue stored? Is it just dispersed throughout the  
3 straw evenly?

4           A. The cryotip is more like what we think, in  
5 our minds, a straw is like. It -- the eggs and  
6 embryos are contained inside the device, and the  
7 device is sealed shut.

8                   The eggs and embryos are typically within  
9 the first few millimeters from the bottom of the  
10 device.

11           Q. All the boxes were flush with the bottom  
12 of the tank; is that right?

13           A. All the boxes are sitting on the -- on the  
14 plate that is in the bottom of the tank, yes.

15           Q. They were not stacked?

16           A. These tanks are designed to be stacked,  
17 but we have chosen to operate them with only one  
18 level of boxes.

19           Q. When you transferred the boxes from Tank 4  
20 to the replacement tank, did you concurrently  
21 transfer the canes and goblets and cryotips and  
22 cryolocks? You just transferred the box as a unit  
23 with everything in it?

24           A. The box with its contents.

25                   And the process would have been that we

1 would take a box out of the replacement tank,  
2 creating a space in that tank, and then swap in the  
3 box from Tank 4.

4 Q. When you were transferring the boxes,  
5 there was already liquid nitrogen in the replacement  
6 tank or not?

7 A. Yes. The replacement tank had been filled  
8 and stabilized before we attempted to transfer any  
9 tissue.

10 Q. After you -- how long did it take you to  
11 empty out Tank 4?

12 A. Somewhere in the region of two to three  
13 hours.

14 Q. After you emptied out Tank 4, where did  
15 you take the tank -- or did you just leave it where  
16 it was?

17 A. Tank 4 was left in position. We did not  
18 move it or do anything with the tank other than  
19 leaving the lid off so that the nitrogen inside  
20 could evaporate.

21 Q. So you said people took Tank 4 away within  
22 a few days. Do you know who?

23 A. I know that counsel contracted with a  
24 third party. I don't remember the name of the  
25 company.



DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA     )  
                                      ) ss.

I, Siew G. Ung, hereby certify:

I am a duly qualified Certified Shorthand  
Reporter in the State of California, holder of  
Certificate Number CSR 13994 issued by the Certified Court  
Reporters' Board of California and which is in full  
force and effect. (Fed. R. Civ. P. 28(a)(1)).

I am authorized to administer oaths or  
affirmations pursuant to California Code of Civil  
Procedure, Section 2093(b) and prior to being examined,  
the witness was first duly sworn by me. (Fed. R. Civ.  
P. 28(a)(a)).

I am not a relative or employee or attorney or  
counsel of any of the parties, nor am I a relative or  
employee of such attorney or counsel, nor am I  
financially interested in this action. (Fed. R. Civ. P.  
28).

I am the deposition officer that  
stenographically recorded the testimony in the foregoing  
deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before completion of the deposition, review of  
4 the transcript [ ] was [XX] was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8 Dated: OCTOBER 11, 2019

9  
10   
11 \_\_\_\_\_  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25